ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 670 OF 2007

Siddheshwar Maruti Karande & Ors. ...Appellants.

Vs.

Chandarani Bharat Dhavan & Ors. ...Respondents.

Mr. Pankaj Das, for the appellants.

Mr. S.S. Salunke, for respondent Nos. 1,2, 4 to 6.

Mr. S.N.Gawade, AGP for respondent No.8.

CORAM : ANOOP V. MOHTA,J.

DATED : 31st July, 2007

P.C.

1. The appellants have challenged the judgment and order dated 7th February, 2007 passed by the learned Ad-hoc Additional District Judge, Solapur in Civil Miscellaneous Application No. 344 of 2005 thereby confirming the Judgment and Order dated 19th November, 2005 passed by the learned Joint Charity Commissioner, Latur.

2. Some time in 2004 the appellants filed change report before the Assistant Charity Commissioner, Solapur which was allowed. The respondents, therefore filed revision before the learned Joint Charity Commissioner, Latur. On 19/11/2005, the learned Joint

Charity Commissioner partly allowed the said revision of the respondents and thereby set aside the change report and remanded the matter to the Assistant Charity Commissioner, Solapur.

3. The appellants, therefore, challenged the said remand order before the District Judge, Solapur.

4. By judgment and order dated 7th February, 2007, the learned District Judge rejected the revision filed by the appellants and thereby confirmed the order dated 19/11/2005 of remanding the matter to the Assistant Charity Commissioner, Latur.

5. The scope of the Court in the present first appeal under Section 72 of the Bombay Public Trusts Act-1950 (for short, "BPT Act-1950") is very limited, vide **Jagatnarayan Singh Swarupsingh Chithere and Ors. Vs. Swarupsingh Education Society & Anr. 1980 Mh.L.J. Page 372** , after considering the rival contentions raised learned counsel appearing for the parties, the submission that the impugned order of remand, which is confirmed by the impugned order is illegal, improper and contrary to the principle of law.

6. The Judgment and Order passed by the learned Charity Commissioner dated 19/11/2005, in view of **Kishor Kirtilal Mehta Vs. Assistant Charity Commissioner & Ors. 2006(1) M.L.J. Page 133** is correct. The learned Joint Charity Commissioner as recorded, not issued notice to the out going trusties before change report filed by the applicants. There was no order passed on delay condonation application also. The case that the change report was not within limitation as contemplated under Section 22(1) of the BPT Act, as it was filed after two years and six months just cannot be overlooked.

7. It is rightly observed that the delay condonation application should have been decided first and opportunity should have been given to the all out going trusties before accepting the change. The finding is correct. The reasoning given to remand the matter and confirmed by the impugned judgment is within the framework of principle of natural justice.

8. The submission that the consent was given and therefore, notice was not necessary, is not correct. In the facts and circumstances of the case, in view of the challenge raised and made by the trusties who were

not heard in such matters before passing any order of acceptance of any changed report, it is necessary to give hearing and opportunity to all concerned. In this background, the order of Joint Charity Commissioner, Latur, therefore, is legal and proper and it cannot be said to be perverse or illegal.

9. This finding as arrived at by the two Courts below, therefore, considering the scope and power under Section 72 of the BPT Act, I am not inclined to accept the submissions as raised in the present appeal.

10. The impugned order is within the framework of law and the record.

11. Resultnatly, the first appeal is dismissed.

(ANOOP V. MOHTA, J.)